IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3831 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

==========

SPL.LAQ OFFICER - Appellant(s)
Versus
DEVAJI HIRAJI THAKORE & 1 - Defendant(s)

==========

Appearance :
MS REETA CHANDARANA, AGP for Appellant.
MR KM SHETH for Defendant(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/08/2007

ORAL JUDGMENT

1. The Special Land Acquisition Officer, appellant-original opponent No.1, has filed this appeal against

the judgment and award dated 10.11.2003 passed by the learned 2nd Extra Assistant Judge & Special Judge (L.A.Q.), Ahmedabad Rural in Land Acquisition Case No.1479 of 1996.

2. Heard Ms.Reeta Chandarana, learned AGP appears on behalf of the appellant. She states that in the aforesaid matter the land is acquired for the purpose of construction of Narmada Canal. The Government decided to acquire the land of Village Chunipura, Taluka Viramgam, District Ahmedabad ad-measuring 4591 sq.mtr. The Government has issued notification under Section 4 of the Land Acquisition Act, 1894 on 30.5.1992 whereas the notification under Section 6 of the Act was published on 14.10.1993. After following the due procedure, the Special Land Acquisition Officer by his award dated 1.11.1994 awarded Rs.0.90 per sq. mtr. for the acquired land as against the claim of the applicants of Rs.25/- per sq. mtr.

3. Being aggrieved and dissatisfied with the said award of the Land Acquisition Officer, the claimant preferred Reference under Section 18 of the Land Acquisition Act before the learned 2nd Extra Assistant Judge, Ahmedabad (Rural) being Land Reference Case

No.1479 of 2006. The learned Judge, as indicated above, pleased to allow the reference application and awarded Rs.15.50/- per sq.mtr. additional amount over and above amount awarded by the Land Acquisition Officer. In all Rs.16.40/- per sq. mtr.

4. Heard Ms.Reeta Chandarana, learned AGP for the appellant. She has stated that before the trial Court, the claimants have contended that the village in which the land in question was situated had got all facilities like light, water etc. and they have also stated that in their village, there are Milk Co-operative Society, High School, Primary Schools, Hospital, Bus Stand and Road, Telephone Facilities etc., and by making such types of allegation, the claimants have very specifically contended that they are entitled to get Rs.25.00/- per sq. mtr., as against compensation for the acquired land. The State has opposed the same by filing written statement at Exh.10.

5. On behalf of the claimants, the claimant Thakore Devaji Hiraji has given his deposition on oath at Exh.33. He stated that he is the claimant of Survey No.51/3 which was acquired for the

construction of Viramgam Branch Canal No.2 of Narmada Project and the lands of other farmers were also acquired for the same purpose and all the acquired lands are situated just adjoining to each other. It was further stated on oath that all the acquired land are equal and fertile land and having irrigation facilities by way of Wells and Bore wells and the farmers of village Chunipura are taking three different crops in a year and were earning net agricultural income of Rs.30,000/- per vigha per year. It was further stated that the land in question is having various facilities like water, light, pakka road, primary school etc., and in that way the village is one of the developed village of Viramgam Taluka. It was further stated that the village is situated over Viramgam Kadi road and Village Detroj and Village Korda are situated just adjoining to Village Chunipura and the fertility of all the surrounding villages are equal and the land from the surrounding village i.e. Village Detroj and Village Korda. He has also relied upon Exh.29 in connection with the judgment of Village Detroj and the judgment of Reference Court in case of Village Korda at Exh.30 and the Tracing of Map which is prepared by Talati of Korda at Exh.31 and in that

way they are relied upon the previous award and judgment of Village Korda and Village Detroj. He has also been cross-examined in this behalf.

6. The opponents also examined one witness Yogeshbhai Bhikhalal Shukla at Exh.35. The claimants also produced documentary evidence at Exh.17 i.e. Form No.7/12, Exh.29 judgment LAQ No.2192/96, Village Detroj, Exh.30 judgment LAQ No.1580/95 Village Korda, Mehsana and Exh.31 Map. The opponents have not produced any evidence on record.

7. The claimants have stated that they are entitled to rely upon the previous award and also relied upon the judgment of Hon'ble Apex Court in the case of **State of Madras vs. A.M.Nanjan reported in AIR 1976 SC 473**. They have also relied upon the judgment of this Court in **Special Land Acquisition Officer, Bharuch vs. Motibhai Mohanbhai reported in 1997(2) GLH 773**. After going through the previous two awards and the judgment of this Court, the learned Judge has held that, as regards Exh.29 village Detroj, the trial Court has awarded Rs.19.10/- per sq.mtr., and as regards village

Korda, the trial Court has awarded Rs.12.75/- per sq.mtr. in this behalf. The claimants have also produced the Map to show that the land in question is situated near Village Detroj and Village Korda just adjoining to Village Chunipura and all the lands are equal so far as the fertility and production is concerned. In view of the same and in view of the judgment of Hon'ble Apex Court in the case of A.M.Nanjan (supra) and the judgment of this Court in the case of Motibhai Mohanbhai (supra), the learned Judge has awarded Rs.15.50/- per sq.mtr. for the acquired land as additional compensation over and above the compensation already awarded by the Land Acquisition Officer, thus in all at the rate of Rs.16.40/- per sq.mtr.

8. Mr.K.M.Sheth, learned advocate states that as regards Exh.29 and Exh.30 i.e. judgment of Village Detroj and judgment of Village Korda is concerned, the State has not filed any appeal in this behalf and therefore the award passed by the trial Court is final. Ms.Reeta Chandarana, learned AGP is not able to dispute the said statement in this behalf.

9. In view of this facts and circumstances of the

case, and particularly the fact that in the adjoining village the trial Court has granted adequate compensation, and from the evidence of the claimants particularly the Map which shows that the Village Chunipura i.e. land in question is adjoining to the land of Village Detroj and Village Korda and against that award, the State has not filed appeal in this behalf. Thus, this Court does not find any merits in the appeal and, therefore, the appeal is liable to be dismissed.

10. For the foregoing reasons, the appeal fails and is dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(K.M. Mehta, J.)

syed/